malice and the absence of reasonable and probable cause. The only question then I have to consider is whether it is necessary for the plaintiff in this case to establish the favourable determination of the proceeding of which he complained.

It seems to me that in this class of case much depends upon the nature of the proceedings of which the plaintiff complains. For example, the wrongful presentation of a petition in bankruptcy against the debtor, or a petition to wind up a trading company, may give rise to such action as the present; and I apprehend in that case it would be necessary to establish that the petition had been dismissed or otherwise disposed of before the commencement of the action for damages. See *Quartz Hill Consolidated Mining Company* v. *Eyre* (1883) 11 Q.B.D. 674. But there are a number of cases in which it would be impossible for the plaintiff to establish that the proceedings determined in his favour.

For example:—

The malicious arrest of a ship—see *Walter D. Wallet*, (1893) P. 202

The malicious issue of an extent—see *Craig* v. *Hasell*, (1843) 4 Q.B. 481; 114 E.R. 980

The malicious registering a judgment—see *Gibbs* v. *Pike*, (1842) 12 L. J. Ex. 257; 152 E.R. 149

and The registration of a document as a bill of sale see—*Horsley* v. *Style* (1893) 69 L.T. 222.

It is to be remembered here that the proceeding is not the suit itself which admittedly resulted in judgment adverse to the present plaintiff. The proceeding we are considering is that which resulted in the issue of a warrant for the arrest of the plaintiff before judgment.

This proceeding issues under section 492 of the Civil Procedure Code, upon an *ex parte* application of the plaintiff; and under the proviso to that section, if the defendant in the action pays to the officer of the Court the sum specified in the warrant as sufficient to satisfy the plaintiff's claim, no further proceedings are had on the application. In this case the plaintiff did not pay the amount but furnished security.

When the suit came on for hearing in the Magistrate's Court, the plaintiff after the judgment in that suit, could have applied to the Magistrate under section 504 of the Civil Procedure Code, and if he had done so. the question of the propriety of the issue of the warrant would have been raised; but the defendant would have been bound by the award of the Magistrate, since under sub-section (ii) of that section, such an award is a bar to any other suit.

In my view, the plaintiff was not bound to apply to the Magistrate to set aside this order either before or after judgment as a preliminary to the present suit.

To my mind there are practical difficulties in the way of such an application. In the first place the Magistrate might well have declined to entertain such an application until the hearing of the suit, and in view of the terms of section 504, would have declined to make any order upon such an application until the hearing. At the hearing the defendant admitted the plaintiff's claim, whereupon judgment was entered for the plaintiff in that suit. If then an application had been made under section 504 of the Civil Procedure Code, the plaintiff would have been faced with the difficulty I have mentioned. Section 504 too suggests that a defendant against whom such an order has been made has an alternative remedy.

In the next place, assuming that the Magistrate had entertained such an application, the plaintiff would have been called upon to establish a negative, which is always a difficult matter.

Lastly, the plaintiff might not have regarded the Court of the Magistrate, who made the order for the issue of the warrant, as a particularly favourable tribunal to consider the propriety or otherwise of that order.

In my view, in the events which happened in this case, the proceedings by way of a warrant for the arrest of the plaintiff came to an end as soon as he had furnished security, and in the circumstances to which I have referred, the proceedings could not determine in favour of the plaintiff in the manner in which a prosecution in a criminal case is determined.

I am of the opinion that it is not incumbent upon the plaintiff in this suit to establish that the order for the issue of a warrant for his arrest had been set aside as a condition precedent to his present action, and the preliminary objection fails.

(NOTE:—We are informed that an appeal has been filed against the above decision. Ed:)

(Appellate Criminal Jurisdiction)

Thorne, Ag. C. J.

November 8, 1932.

PUBLIC PROSECUTOR.....Appellant

v.

CHOOI YEW CHOR.....Respondent

(Perak Magistrate's Criminal Appeal No. 68 of 1932)

Tin and Tin-ore Restriction Enactment, 1931, *Rule* 21 *(ii)—Construction of Rule.*

The words "which has been subjected to any process of concentration" in Rule 21 (ii) of the rules made under the Tin and Tin-ore Restriction Enactment, 1931, should not be construed as referring only to tin-ore which has been dressed or cleaned, but should receive a wider interpretation, bearing in mind that so soon as tin-bearing earth has been separated from earth which does not bear tin, the first step in the process to concentrate has commenced.

Raja Musa, Deputy Public Prosecutor, for the Appellant.

G. Terrell for the Respondent.

The facts appear sufficiently from the judgment.

Cur. ad. Vult.

Thorne, Acting C. J.:—One Chooi Yew Chor was charged in the Magistrate's Court, Batu Gajah, as follows:—

> "That you, being a producer of tin-ore from the "mine known as Kwong Ban Hin Kongsi under Certi- "ficate of Production register No. B.G. 40. on or about "the 19.2.32, did have in your possession on Lot No. 15401 "Mukim of Sungei Trap, tin-ore which had been "subjected to a process of concentration in excess of the "sum of the balance of the quota in your Certificate of "Production and the total of the half-monthly average "of the quota in your Certificate of Production and the "quantity declared by you under section 108 of the "Mining Enactment 1928 as in your possession on the "1st day of March 1931, to wit, an amount in excess of "72 piculs 50 katties permitted to be stored by the mine, "and furthermore in excess of the total amount of 137 "piculs 55 katties permitted to be stored by the group "of mines of which you are a member an offence under "Rule 21 (ii) and punishable under Rule 21 (iv) of the "Tin and Tin-ore (Restriction) Rules (No. 3) 1931".

The case came on before the Magistrate, Batu Gajah, on the 19th day of May 1932, and after the case for the prosecution had been closed, counsel for the defendant intimated that they would call no evidence, but submitted:—

(1) that Rule 21(ii) of the Tin and Tin-ore Restriction Rules No. 3 of 1931 was *ultra vires*, and

(2) that no sufficient evidence had been adduced to establish that the material found in the possession of the defendant was in fact tin-ore.

The prosecution then sought to put in evidence a certificate by the Government Analyst to meet this objection of the defence. When it was objected that this evidence should not be admitted at that stage of the case, the learned Magistrate adjourned the case in order to consider this objection.

The case came on again on 24th June 1932, when the matter was argued fully, and the Magistrate decided to admit further evidence. The case was again adjourned to the 27th July, when further evidence was led, and the learned Magistrate acquitted the defendant. Against that acquittal, the Public Prosecutor has preferred an appeal.

In the first place I desire to express my appreciation of the manner in which this case was conducted by the learned Magistrate, and this Court is indebted to him for his very careful note of the evidence and the arguments of counsel, and for the careful and closely reasoned grounds of judgment he has been good enough to furnish.

I must also congratulate counsel for both sides on the appeal upon the manner in which each of them prepared and presented his case.

The ground of appeal relied upon by the appellant is that the Magistrate was wrong in holding that there was no evidence that the ore found in the possession of the defendant was ore which had been subjected to any process of concentration.

The learned Magistrate held that the prosecution had failed to establish this proposition, and therefore, that the ore found in the possession of the defendant was tin-ore which fell within the purview of Rule 21 (ii). This decision being fatal to the prosecution, the learned Magistrate did not express any opinion upon the other questions which were raised.

Upon the hearing of the appeal the appellant contended that the learned Magistrate was wrong in so holding.

For the respondent Mr. Terrell contended that:—
(1) the Magistate was wrong in allowing further evidence to be led;
(2) even if this evidence was admitted properly, the evidence did not establish that the ore found upon the respondent's premises was ore which had been submitted to some process of concentration.
(3) the rule itself was *ultra vires*; and
(4) the prosecution had failed to establish as a fact possession by the respondent of a quantity in excess of that which he was entitled to have in his possession.

With regard to (4) I would say at once that the learned Magistrate has not stated what is his finding of fact on this question, and I desire therefore to avoid any expression of opinion upon this point.

With regard to the first objection I need say no more than that I agree with the ruling of the learned Magistrate. The prosecution had closed their case, and counsel for the defence had intimated that he proposed to call no evidence, but took this technical point. It seems to me that under section 422 of the Criminal Procedure Code, the Court has power to examine further witnesses or recall and re-examine witnesses already examined for the prosecution at any stage. Counsel for the respondent objected to this further evidence being called on the ground that the case for the defence had been closed; but in my view, the case for the defence had not been closed, and when the Magistrate decided to allow further evidence to be adduced, he could still have allowed the defence an opportunity of adducing any evidence they wished to offer in answer to the case for the prosecution.

I agree that where the defence has led evidence to meet the case for the prosecution, the Court should be very reluctant to allow the prosecution the indulgence of calling further evidence except in some unusual circumstances, such as surprise, or by way of rebuttal.

As to (3) I am of opinion that the rule is not *ultra vires* for reasons which will appear later in this judgment. I now proceed to consider the main question which was argued before me, and which is comprised in the ground of appeal.

Rule 21 (ii) is as follows:—

> "No producer shall at any time produce or have in "his possession or in that of any agent or other person "employed on his behalf any tin (or tin-ore which has "been subjected to any process of concentration) in "excess of the balance of the quota in his Certificate of "Production in addition to that permitted under "para (iii)".

The learned Magistrate considered the question as to whether the evidence called for the prosecution established that the tin-ore was in fact concentrated, and he answered this question in the negative. In order to consider whether or not he was right in this view, it is necessary to construe or interpret Rule 21 (ii) and then examine the evidence.

The Tin and Tin-ore Restriction Enactment, 1931. sets out in the preamble that the Government of this country is a party to an international agreement for the control of the production and the export of tin in order to restore an economic balance between production and consumption. By section 2 of the Enactment, The Chief Secretary to Government is empowered to make rules *inter alia* to restrict and regulate the production, possession, sale, purchase, and export of tin and tin-ore.

The rules made under this section establish a scheme designed to limit the total quantity of tin and tin-ore to be produced in and exported from the Federated Malay States.

This result is obtained by fixing the quantity (called the quota) which may be produced, and sold or exported by persons engaged in the business of mining land for tin-ore (called producers) in any specified period of time (called the quota period); to each producer there is issued a certificate of production which evidences the quota allowed to him during each quota period; and provision is made for regulating the sale, purchase and export of tin and tin-ore.

The scheme is thus designed to restrict the quantity of tin-ore which may be produced by any producer in any quota period, the general intention being apparently to limit the quantity of tin-ore which may be in the possession of any producer during any quota period, in order apparently to aviod an accumulation of stocks of tin-ore on mines.

It is a matter of common knowledge that tin is a mineral which occurs in the ground in many parts of the Federated Malay States. Land is mined in a variety of ways, the ore won is dressed or cleaned and then refined by smelting, and exported to the markets of the world.

Every producer who is in possession of tin bearing land is necessarily in possession of tin-ore *in situ* in the ground. It is therefore not possible to make a rule prohibiting generally the possession by producers of tin-ore.

Rule 21(i) provides that no producer shall carry on mining operations without a Certificate of Production issued in respect of the land being mined. Rule (ii) provides that:—

> "No producer shall at any time produce or have in his possession.....any tin (or tin-ore which has been subjected to any process of concentration)....."

in excess of certain quantities, with the details of which we are not concerned for the purpose of this appeal.

In the Court below the words "which has been subjected to any process of concentration" appear to me to have been construed by counsel as referring only to tin-ore which had been dressed or cleaned, or partly dressed or cleaned; and I much doubt whether this is the proper construction to be placed upon those words. Even so, I am of the opinion that there was sufficient evidence to establish a prima facie case of possession by the respondent of a considerable quantity of tin-ore within the meaning of this sub-rule.

Mr. Jameson, a Senior Inspector of Mines, stated that he visited the defendant's kongsi, and as a result of a search, discovered below the surface of the floor a concrete chamber some six feet square, which had been boarded over, and covered with earth on which were placed a large number of rice sacks. On examining the Chamber he found a quantity of loose ore which appeared to have been poured into the chamber through a hole in the boarding, because the ore rose to a shape of a cone.

He is recorded as stating:—

> "With my experience I should say it (the ore) was "very rich well washed concentrate"

He however stated that he asked the defendant what this tin-ore was, and the defendant replied that this ore had been won before restriction came in.

Another witness Leong Ah Soo spoke to the finding of this tin-ore, and stated that he asked the defendant to whom the tin belonged, and that the defendant replied that the tin was his. and that he did not know how the tin-ore got there.

Mr. Foley, employed in the Eastern Smelting Company, gave evidence of the delivery to him of this tin-ore; and another witness Mr. Thomas speaks to his having taken the samples of tin-ore which were subsequently submitted to. the Government Analyst, and certified by him as being tin-ore.

All these witnesses are persons engaged in one way or another in the business of mining or dealing in tin; and it appears to have been generally accepted by them that the ore found was tin-ore concentrate.

For this reason, probably, no question appears to have been put to any of them, which would have established the fact beyond all doubt that the ore was tin-ore which had been subjected to a process of concentration.

Objection was taken to the evidence of Mr. Jameson by counsel for the defendant that he was not an expert within the meaning of section 45 of the Evidence Ordinance, and the learned Magistrate appears to have accepted this view. In this I am unable to agree. A reference to page 448 of the 9th Edition of Woodroffe and Ameer Ali's Law of Evidence makes it quite clear that persons engaged in particular trades are experts as to matters of skill or practice having special reference to those trades. For example, a mason as to masonry, a blacksmith as to whether a horse was properly shod, or a miner as to a question of mining.

If the fact that any substance is tin-ore can only be proved by an expert, then every tin stealer convicted of the theft of tin-ore is by the conviction proved to be an expert. Whether properly called an expert for this purpose or not, I think Mr. Jameson is shown quite clearly to have been a competent witness to prove this fact.

Now, what is the evidence? Mr. Jameson says that he found a quantity of ore, and as I read the passage from his evidence to which I have referred, what he said was:—,

> This ore was a concentrate which from my experience I am of opinion was rich and well washed.

In other words, I regard his statement that he found a concentrate as a statement of fact, and that his expression of opinion is confined to the question as to whether the concentrate was rich and had been well washed. The fact that the ore found was rich tin-ore is corroborated by the certificate of the Government Chemist (exhibit L) which proves the content to have been 76.2 per cent, and that the ore had been washed is confirmed by the fact that a quantity of it when found was wet; it was dried in the godown of the Eastern Smelting Company after it had been weighed, and on re-weighing was found to have lost considerably in weight. It is to be observed that the evidence of Mr. Jameson was not challenged in cross-examination.

The defendant as I have said, when asked about the tin-ore, did not protest that it was not ore—he accepted the fact— and explained his possession of the ore by saying that it had been won before the introduction of restriction.

The fact that the ore was found in the condition which I have described, makes it to my mind clear that the ore was not, when found, in the condition in which one would expect it to be if it had been removed from the mine and placed where it was found, without first having been subjected to some process of treatment.

In my view, therefore, there was some evidence upon which the Magistrate could have found that the ore was tin-ore within the purview of Rule 21 (ii).

I am of the opinion, however, that these words are capable of a wider interpretation, and in view of the general scheme of the rules, these words must, in my view, receive that wider interpretation. The difficulty of the learned Magistrate below appears to have been that he was unable to distinguish between the case of a rich deposit of ore removed from the mine and not subjected to any process of concentration, and a poor grade ore which had been dressed so as to eradicate impurities.

I am unable to find in this record any evidence as to the method of mining employed by the defendant. But whatever that method may be, it seems to me that the removal from its position *in situ* in the ground to a kongsi buildng on the mine is a partial process of concentration without more.

If this be not so, at what stage in the cycle of events involved in winning ore and refining it does the process of concentration begin? Not all the ground of a producer bears tin, and that part of the earth or other substance which bears tin must first be separated from that which does not. So soon as this separation has begun. the first step in a process to concentrate has commenced.

Assuming for the sake of argument that very rich ore is found in a mine and selected by hand picking, or by some other method segregated from the surrounding ground and conveyed to a store on the mine, this in itself is to my mind a process of concentration by the mere selection of the tin-ore from the ground surrounding the position where it is found.

I am of the opinion, therefore, that the interpretation put upon this rule by the learned Magistrate was too narrow, and I therefore reverse his ruling upon this point, and remit the case to him, in order that if he is satisfied that the prosecution have proved the other ingredients necessary to establish this offence against the defendant, he should convict.

STRAITS SETTLEMENTS.

PRIVY COUNCIL

Lord Blanesburgh, Lord Russell of Killowen & Lord Macmillan.

February 28, 1933.

In the Matter of Oei Tiong Ham Deceased.

THE COMMISSIONER OF STAMPS, STRAITS SETTLEMENTS.....Appellant.

vs.

OEI TJONG SWAN & ORS.....Respondents.

(Singapore Originating Petition No. 4 of 1931. Privy Council Consolidated Appeals Nos. 46 and 62 of 1932.)

Estate duty—foreign moveables—liability for duty—construction—Ordinance No. 103 (Stamps), Ss. 2; 68 (1), 72, 73, 74, 75, 81.—leave to appeal.

By section 68 of Ordinance No. 103 (Stamps) it is provided that—

"(1) In the case of every person dying after the first day of February 1908 there shall, in the cases set out in Article 1 of Schedule A, be levied and paid upon the principal value ascertained as hereinafter provided of all property which passes on the death of such person a stamp duty called 'Estate duty' at the graduated rates mentioned in that article".

A testator who was a foreign subject domiciled in the Straits Settlements at the date of his death in the Colony left in addition to immoveable and moveable property in the Colony valuable moveable assets outside the Colony. The Commissioner of Stamps in determining the value of the deceased's Estate for purposes of stamp duty included the value of his immoveable property situated abroad.

The question at issue before the Privy Council was whether estate duty is leviable under the Stamps Ordinance on the deceased's moveables situated in a foreign country.

Held, by the Privy Council, reversing the decision of Terrell, J. of the first instance as unanimously confirmed by the Court of Appeal (Murison C. J., Sproule, S. P. J. and Thorne J.) that on the true construction of section 68 (1) of the Ordinance the words "all property" include foreign moveables of persons dying domiciled in the Colony. *Blackwood* v. *The Queen* (1882) 8 A. C. 82, *Winans* v. *Attorney-General*, (1910) A.C. 27 referred to.

The Court of Appeal has power to allow an appeal to His Majesty in Council in a matter under Section 80 of Ordinance No. 103 (Stamps). The decision against which the Commissioner of Stamps appealed in this case, not being an award of an administrative character but a judgment made by a Court in a civil case within the meaning of the Colonial Charter of 1855 and a final judgment within the meaning of S.1154 of the Civil Procedure Code, the Court of Appeal was wrong in refusing leave to appeal to the Privy Council.

An appeal by special leave to the Privy Council from a decision of the Court of Appeal (Murison C.J., Sproule, S.P.J. & Thorne J).

The material facts are related in the Judgment below.

The appeal was heard by Lord Blanesburgh, Lord Russell of Killowen & Lord Macmillan.

Sir Stafford Cripps, K.C., & H.P. Hills for the Appellant.
C. E. Jenkins, K.C., H.F. Greenland & K. K. O'Connor for the Respondents.

Cur. Adv. Vult.

The Judgment of their Lordships was delivered by Lord Macmillan.

Lord Macmillan:—The late Oei Tiong Ham died in Singapore on the 3rd June, 1924. Though not a British subject he was at the time of his death domiciled in the Colony of the Straits Settlements. He left a very large estate which in addition to moveable and immoveable property in the Colony also somprised valuable moveable assets outside the Colony consisting chiefly of shares in companies in the Dutch East Indies valued at over $27,000,000.

The whole of the deceased's property within the Colony admittedly became liable on his death to estate duty under Ordinance No. 103 (Stamps) then in force in the Colony. The question is whether estate duty is also payable on the deceased's moveable property outside the Colony.

The Commissioner of Stamps of the Colony, who is the appellant before their Lordships, in determining the value of the deceased's estate for the purpose of the duty included the value of his moveable property outside the Colony. The present respondents, who are the executors under the deceased's will, objected and appealed to the Supreme Court of the Colony. By a judgment of Terrell, J., unanimously affirmed by the Court of Appeal, it was held that the deceased's moveable property outside the Colony was not liable to estate duty and consequently had wrongly been included by the Commissioner in his valuation.

The Commissioner applied to the Court of Appeal for leave to appeal to His Majesty in Council but leave was refused on the ground that such appeal was incompetent. The Commissioner then petitioned His Majesty in Council for special leave to appeal, which was granted. The Court of Appeal granted the Commissioner leave to appeal against their refusal of leave to appeal to His Majesty in Council and this appeal has been consolidated with the appeal by special leave on the merits. Their Lordships will deal in the first place with the latter.

Estate duty in the Colony at the date of the deceased's death was imposed and regulated by the Ordinance No. 103 (Stamps) above mentioned. Section 68 of that Ordinance provides as follows:—

> "(1) In the case of every person dying after the first day of February 1908 there shall, in the cases set out in article 1 of schedule A, be levied and paid upon the principal value ascertained as hereinafter provided of all property which passes on the death of such person a stamp duty called 'estate duty' at the graduated rates mentioned in that article."

Section 2 of the Ordinance provides that "unless there is something repugnant in the subject-matter or context," "'Property' includes moveable and immoveable property...." Section 81 also contains provisions, immaterial to the present question, as to what is included in the terms "property" and "property passing on the death" for the purposes of the chapter of the Ordinance now under consideration. The provision for the ascertainment of the principal value of property passing on a death is contained in section 73 (4) which directs that the value is to be estimated at the open market price. The duty is payable by stamps affixed to an affidavit delivered by the executor to the Commissioner or, in so far as estate duty is not paid by the executor, by stamps affixed to an account setting forth the particulars of the property and delivered to the Commissioner by the person accountable. Schedule A under the heading "Description of Instrument" contains as the first item "Affidavit and Account of estate duty" and in article 1 sets out a graduated scale applying stamp duty at rising percentage rates according as the principal value of the estate rises in amount.

It will be observed that estate duty is leviable under section 68 (1) of the Ordinance above quoted on the principal value of "all property" which passes on the death of every person who dies after the 1st February, 1908. As the deceased died after the 1st February, 1908, and as his moveable property outside the Colony undoubtedly passed on his death, the language of the section plainly covers the case of such property. But it is said that notwithstanding the generality of its language the section must be read subject to certain tacit exceptions and in particular subject to the exception of property outside the Colony.

It is common ground that immoveable property of the deceased situated outside the Colony is not subject to estate duty under the Ordinance although forming part of the property which passed on his death. This is conceded by the appellant on the ground that the Ordinance must be presumed not to infringe the comity of nations by taxing foreign land which is subject only to the *lex loci rei sitae*. It is further conceded that the duty extends only to the moveable property situated abroad of a person who has died domiciled in the Colony. These are considerable breaches in the universality of the language of the Ordinance and the respondents have at least the argumentative advantage of starting with the admission in their favour that the words "all property which passes on the death" cannot be read literally but are to be interpreted as subject to substantial implied limitations. This no doubt carries them a certain length but does not absolve them, when they seek to impose a further restriction on the scope of the words, from showing that such restriction is necessitated by the terms of the Ordinance or by some presumption or rule of construction applicable to the case. The fact that the words are subject to certain admitted qualifications does not of itself afford any presumption that they are subject to a further restriction which is not admitted.

The respondents argued that they were entitled to rely on a presumption that the revenue laws of a country do not extend to property outside its territory and that in passing this Ordinance the local legislature must be taken to have intended to affect only property within its own jurisdiction. "But there is nothing in the law of nations which prevents a Government from taxing its own subjects on the basis of their foreign possessions. It may be inconvenient to do so. The reasons against doing so may apply more strongly to real than to personal estate. But the question is one of discretion, and is to be answered by the statutes under which each State levies its taxes." (*Blackwood* v. *The Queen*, 1882, 8 App. Cas. *per* Sir Arthur Hobhouse, delivering the judgment of the Board, at p. 96.) Indeed, the Colony has now itself a subsequent Ordinance expressly imposed estate duty on the foreign moveables of persons dying domiciled in the Colony. The respondents are thus not able to avail themselves of any general presumption to the effect suggested.

They next rely on the character of the duty itself. They assimilate it to probate duty and differentiate it from legacy and succession duty and invoked the authorities which have established that probate duty though imposed in the most all-embracing terms nevertheless does not extend to property out of the jurisdiction. The estate duty, however, imposed by the Ordinance is neither probate duty nor legacy and succession duty and to discuss whether it more resembles the one or the other is, again to quote *Blackwood* v. *The Queen*, at p. 91, "not very profitable."

The answer to the question must be found from an examination of the Ordinance itself, for the best and safest guide to the intention of all legislation is afforded by what the legislature has itself said. Is there then any light to be derived from the terms of the Ordinance itself as to the scope of the words "all property which passes on the death" and in particular as to whether these words were intended to include moveable property abroad? As it happens there is the clearest indication that the framers of the Ordinance had in view that it would extend to such property. In section 73 property situate out of the Colony is twice referred to in terms which unmistakably indicate that such property is contemplated as subject to the estate imposed by section 68. Subsection (2) of section 73 runs as follows:—

> "An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the Colony, unless contracted to be paid in the Colony

> or charged on property situate within the Colony, except out of the value of any property of the deceased situate out of the Colony in respect of which estate duty is paid; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Commissioner that the property of the deceased situate in the country in which the person to whom such debts are due resides is insufficient for their payment."

The subsection, it will be noted, expressly refers to estate duty paid in respect of property situate out of the Colony.

Then comes subsection (3) which reads thus:—

> "Where any property passing on the death of the deceased is situate in any country outside the jurisdiction of the Supreme Court and the Commissioner is satisfied that by reason of such death any duty is payable in that country in respect of that property, he shall make an allowance of the amount of that duty from the value of the property."

If possible, this subsection makes clearer still that property outside the Colony is to be included in the valuation for estate duty.

Their Lordships find it impossible to say after reading these subsections that the Ordinance did not contemplate that the duty which it imposed should be imposed on property situate out of the Colony or that the language of section 68 must be held not to have been intended to include such property. Mr. O'Connor of the Straits Settlements Bar, to whose admirable and ingenious advocacy on behalf of the respondents their Lordships are much indebted, endeavoured to avoid the implication of these subsections by suggesting that they might have a use in certain abnormal or exceptional cases without actually involving the imposition of the duty but it is unnecessary to discuss these refinements for he did not succeed in displacing the plain indication of the language of the Ordinance. The present case is really the converse of *Blackwood* v. *The Queen* (*cit. sup.*). In that case their Lordships discovered in the sections of the statute unmistakable evidence that the general language imposing the tax was not intended to include property situated outside the State of New South Wales. Here a similar examination of the statute has disclosed an even more distinct intention to include property situated outside the Colony of the Straits Settlements.

In the Courts below no satisfactory explanation is given of the presence in the Ordinance of these subsections (2) and (3) of section 73 or of the clear indication which these subsections give that the Ordinance intended to deal with property situated outside the Colony. The learned Judge of first instance (Terrell, J.) is driven to suggest that they may have been inserted *per incuriam* through careless drafting. Their Lordships can lend no countenance to such a method of treating a statutory enactment. The learned Chief Justice dismisses the subsections as dealing merely with the machinery for the calculation of the taxable estate, and as such ineffective to extend the charging provisions of the Ordinance. Thorne, J., deals with them in much the same way. But this is to miss the point. It may well be that provisions dealing merely with the machinery of taxation ought not to be presumed to impose a charge, but statutes must be read as a whole and the language used in so-called machinery sections may be called in aid for the interpretation of the charging sections.

The difficulty in which the learned Judges find themselves in accounting for the terms of section 73 (2) and (3) consistently with their decision is entirely occasioned by their approach to the problem of construction which the case presents. Instead of first considering the terms of the Ordinance itself, they have at once entered upon an elaborate comparison of its provisions with those of the Imperial Finance Act of 1894, and proceeded to draw inferences from the variations between the Ordinance and the Imperial statute. This is a perilous course to adopt and one which certainly does not commend itself to their Lordships. Decisions of the Imperial Courts on statutes dealing with the same subject matter may often be useful in the interpretation of similar provisions in colonial measures and a comparison between similar measures of the Imperial and the Colonial Legislatures may on occasion be helpful (Cf. *Alcock Ashdown & Co.* v. *Chief Revenue Authority, Bombay*, 1923, 50 I.A. 227 at p. 238). But it is quite a different thing to institute a textual comparison such as has here been made and to rely on conjectures as to the intention of the draftsman in selecting some and rejecting other provisions of his presumed model. The basis indeed of the judgment below is to be found in an inference drawn from the fact that while section 68 of the Ordinance corresponds generally with section 1 of the Imperial Finance Act, the Ordinance contains no provisions equivalent to section 2 (2) of that Act. The case of *Winans* v. *Attorney-General* [1910] A.C. 27 is then invoked as deciding that without section 2 (2) the language of section 1 of the Imperial Act would not include foreign personal property, and the conclusion is reached that as the Ordinance does not contain any provision corresponding to section 2 (2) of the Imperial Act, section 68 (1) of the Ordinance, which corresponds to section 1 of the Imperial Act, must be read as not extending to foreign personal property. Their Lordships cannot accept this reasoning. In the first place, while there are passages in the speech of Lord Atkinson in *Winans* v. *Attorney-General* which may well have led the Judges in the Courts below to conclude that section 2 (2) of the Finance Act was in the view of that noble and learned Lord an enlarging section without which a narrower interpretation must have been placed on section 1, their Lordships are by no means satisfied that this is the correct view of the effect of section 2 (2). The other noble and learned

Lords who took part in the decision of the case do not so express themselves as regards the effect of section 2 (2).

"It is clear," says the Lord Chancellor (Loreburn) at p. 30, "that the language of section 1 of the Finance Act, 1894, is wide enough to cover the present case, and that the Act does not contain any exception which would withdraw the property in question from the incidence of estate duty." There is here no suggestion that section 1 contains an inherent restriction to property within the United Kingdom which is removed only by an inference from the terms of section 2 (2). At p. 47 Lord Shaw treats section 2 (2) as an exception from the generality of section 1, not as expanding its scope, when he says that: "In the case of an English citizen all his property 'wheresoever situate,' subject to the exception in the Act, is aggregated, and into that aggregation.....all personal property situate out of the United Kingdom must come, unless legacy or succession duty would not have been payable in respect thereof."

Their Lordships do not agree with the view expressed by Thorne, J., in the present case and adopted by his colleagues that "the effect therefore of this subsection in Engand was to bring into charge as property passing on death assets locally situate out of the United Kingdom upon which probate duty would not before the passing of this Act have been chargeable." On the contrary, their Lordships regard section 2 (2) as excluding from the operation of section 1 what would otherwise have been included under that section. This is the natural reading of the language of the subsection, which is expressed in terms of restriction, not of expansion. No doubt the interpretation of the general language of section 1, on any question arising as to its including property abroad, may be legitimately aided by a reference to section 2 (2), but that is a very different thing from saying that without such aid section 1 would necessarily be construed as excluding foreign property and that section 2 (2) expands its meaning so as to bring into charge foreign property which would otherwise escape.

Starting from their assumption that section 1 of the Imperial Act would not have included property abroad in the absence of section 2 (2) and reasoning that, as the Ordinance contains nothing corresponding to section 2 (2), section 68 of the Ordinance, which corresponds to section 1 of the Imperial Act, must equally be held not to include property out of the Colony, the learned Judges below proceed to consider the rest of the Ordinance on the footing that section 58 of itself does not include property out of the Colony and find nothing elsewhere in the Ordinance to persuade them that it can have any application to such property, notwithstanding the terms of section 73 (2) and (3) for which they are unable to account. This in their Lordships' view, for the reasons already explained, is a false start and leads to inextricable difficulty.

It may well be that those who had at first to administer the Ordinance were not aware that it gave them the power to tax moveable property out of the Colony, and there are indications in the past history of the estate duty in the Colony, as expounded by Mr. O'Connor, which give much support to this view. But the fact that the potency of the weapon confided to them was not fully realised by those who wielded it cannot control the interpretation of the Ordinance now that its true scope has to be judicially ascertained.

Their Lordships accordingly are of opinion that the appeal should succeed and that the judgments below should be reversed.

Passing to what has been designated the procedure appeal, their Lordships have to consider whether it was within the competency of the Court of Appeal to grant leave in this case to appeal to His Majesty in Council. In holding the contrary, the learned Chief Justice stated that he did so "reluctantly and against his own opinion" in deference to a previous decision of his Court in a case of *The King on the Prosecution of the Income Tax Commissioner* v. *The Firms A.R.A.M. and P.A.* in 1922, which he felt himself constrained "from courtesy rather than conviction" to follow. Thorne, J., shared the reluctance of the Chief Justice, while Sproule, S.P.J., alone championed the soundness of authority so manifestly distasteful to his colleagues.

Their Lordships did not have the advantage of a full argument on the question as the respondents, not having any interest in the matter, in view of the special leave to appeal granted by order of His Majesty in Council, did not feel called upon to contest the appellant's submission. The whole ground. however, is adequately explored in the judgment of the learned Chief Justice whose convincing arguments against the decision which he reluctantly reached appears to their Lordships really unanswerable. It is true that the Ordinance in section 80 which deals with appeals from decisions of the Commissioners does confer a right of appeal to His Majesty in Council. But the Colonial Charter of 1855 provides for leave to appeal being granted by the Court of the Colony from "all judgments, decrees or determinations made by the said Court of Judicature in any civil cause." And section 1154 of the Civil Procedure Code provides that subject to certain conditions "an appeal shall lie from the Court of Appeal to His Majesty in Council (*a*) from any final judgment or order." Wider language it would be difficult to imagine. Their Lordships do not think it necessary to repeat the reasons adduced by the Chief Justice against excluding the decision of the Appeal Court in the present instance from the scope of these provisions and content themselves with

expressing their agreement. The decision against which the Commissioner sought to obtain leave to appeal was in their Lordships' view not a mere award of an administrative character but a judgment or determination made by the Court in a civil cause within the meaning of the Charter and a final judgment or order within the meaning of section 1154 of the Civil Procedure Code, and as such the Court could competently have granted leave to appeal from it to His Majesty in Council.

In the result the Commissioner is entitled to succeed in both the consolidated appeals. Their Lordships will humbly advise His Majesty in the procedure appeal that the appeal be allowed and the order of the Appeal Court of 9th January 1932 be recalled with a declaration that it was within the competence of the Court of Appeal to grant the leave to appeal craved in the petition which by that order was dismissed; and in the appeal on the merits, that the appeal be allowed, the order of the Appeal Court of 30th November 1931 and the order of Terrell, J., of 12th August 1931 be recalled and the case be remitted to the Supreme Court of the Straits Settlements with a direction to pronounce a judgment finding that the assets Nos. (10) to (17) inclusive of paragraph 9 of the Originating Petition No. 4 of 1931 are liable to estate duty in the Colony. The appellant will have his costs throughout, other than the costs relating to his petition to the Appeal Court for leave to appeal. The latter costs both below and before their Lordships he must himself bear.

Appeal Allowed.

Solicitors for the Appellant, *Burchells*, London: Solicitors for the Respondents, *Nisbet Drew & Loughborough*, London; *Drew & Napier*, Singapore.

(Appellate Civil Jurisdiction)

Murison, C.J., Burton & Whitley, JJ.

January 11 & 12, 1933.

Re Seow Im Swee Deceased.

SEOW BENG HAY.....Plaintiff. (Appellant).

vs.

SEOW SOON QUEE & anor.....Defendants. (Respondents).

(Singapore Civil Appeal No. 38 of 1932)

Chinese marriage—proof—presumption—Ordinance No. 53 (Evidence) Ss. 32 & 50.

In the absence of proof of a marriage ceremony the Court can upon proper circumstantial evidence presume a secondary marriage between a Chinese man and woman.

Ngai Lau Shia v. Low Chee Neo, 14 S.S.L.R. 35: *Cheang Thye Phin vs. Tan Ah Loy*, 14 S.S.L.R. 79: (1920) A.C. 369 followed.

In cases of pedigree even remote and slight evidence must be allowed effect. *Vowles v. Young*, 13 Ves. Jun. 140.

A Chinese can contract marriage with a *tsip* (secondary wife) without having first married a *tsai* (principal wife).

Woon Kai Chiang v. *Yeo Pak Yee*, (1926) S.S.L.R. 27. applied.

Appeal from the order of Terrell, J. dated the 9th August 1932.

The Plaintiff was the son of one Seow Soon Teck who died in 1927. The latter was alleged to be the son of Seow Swee Peng deceased who was the son of the abovenamed Seow Im Swee deceased under whose Will the defendants were the trustees. In an Originating Summons taken out by him the plaintiff asked for construction of the said Will. By his Statement of Claim the plaintiff claimed to be entitled to a share in the Estate of Seow Im Swee through his father who was a son of Seow Swee Peng deceased by his wife Boon Neo. The Defendants denied that the plaintiff was the lawful grandson or next of kin of Seow Swee Peng deceased. By the Order of Court dated the 18th March 1932 an issue was directed to be tried as to the legitimacy of Seow Soon Teck deceased.

Terrell, J. found that there was insufficient evidence to prove a lawful union between Seow Swee Peng and Boon Neo.

The relevant facts appear sufficiently from the Judgment of Murison, C.J.

The Plaintiff appealed.

Johannes for the appellant.

Soon Kim for the respondents.

Cur. Adv. Vult.

Murison, C. J.—This is an appeal against an order made by Terrell J. upon the simple issue whether one Seow Soon Teck was or was not a legitimate son of one Seow Swee Peng. The learned judge found that he was not.

The order directing the issue was made upon the 18th March, 1932 in an originating summons, taken out by Seow Beng Hay on the 4th March, 1932, asking for the construction of the will of one Seow Im Swee, deceased. The latter was the father of one Seow Swee Peng deceased, who is alleged to be the father of Seow Soon Teck who is the father of the Plaintiff in the issue Seow Beng Hay.

Seow Im Swee died on the 17th October, 1857 leaving a will of which the present trustees, under an order of Court dated 30th December, 1931 (Originating Summons 192 of 1931) are the first and second defendants Seow Soon Quee and Tan Teck Chye.

With regard to the will of Seow Im Swee it is necessary only to say that by clause 5 a certain piece of land was left in perpetuity as a burial ground, and that by clause 11 the residuary estate of the testator was left to Seow Swee Peng.

On the 4th January, 1932 the Government acquired this land, and the sum of $17,000 representing the